

AVAYA TERMS OF USE FOR HOSTED SERVICES

v. 3 - August 2022

IMPORTANT – READ CAREFULLY BEFORE ACCEPTING THESE TERMS.

THESE TERMS OF USE (THE “TERMS”) ARE BETWEEN THE CUSTOMER AND AVAYA INC. A DELAWARE USA CORPORATION WITH AN ADDRESS AT 2605 MERIDIAN PARKWAY SUITE 200, DURHAM, NORTH CAROLINA 27713, UNITED STATES OR THE APPROPRIATE AVAYA AFFILIATE PROVIDING THE SERVICES (“AVAYA”) PROVIDED UNDER THESE TERMS AS FURTHER DESCRIBED IN ANY APPLICABLE SERVICE DESCRIPTION FOR THE SERVICES (HEREINAFTER, “SERVICE”) TO CUSTOMER AND CONTAIN TERMS AND CONDITIONS THAT GOVERN CUSTOMER’S USE AND PURCHASE OF AVAYA HOSTED SERVICES.

BY PURCHASING AND/OR USING AVAYA HOSTED SERVICES, OR AUTHORIZING OTHERS TO DO SO, THE CUSTOMER, ON BEHALF OF THEMSELVES AND THE ENTITY FOR WHOM THEY ARE DOING SO (HEREINAFTER REFERRED TO AS “CUSTOMER”), AGREES TO THESE TERMS AND CREATE A BINDING CONTRACT BETWEEN CUSTOMER AND AVAYA. IF CUSTOMER IS ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, CUSTOMER REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS.

1. TERMS OF SERVICE

1.1 Terms of Service. Upon acceptance of an Order (pursuant to Section 1.3 below), Avaya will make the Services available to Customer for the Initial Term. The Initial Term will renew for consecutive Renewal Terms, where auto renewal is available at the then current price, unless either party gives the other thirty (30) days (or longer period if expressly set out in the applicable Service Description) advance written notice before the Initial Term or current Renewal Term of their intent not to auto renew. Where autorenewal is available, the Renewal Term shall be as described in the SOW or Supplemental Terms.

1.2 Internal Use. Customer may use the Service solely for the Customer’s internal business use in accordance with the Service Description and, for avoidance of doubt, not for further sublicense or resale. Customer’s rights to use the Service are limited to those expressly granted in these Terms. No other rights with respect to the Service or any related Avaya Intellectual Property are implied.

1.3 Orders. Each Order placed and accepted under these Terms will be deemed to be a separate contract between Customer or Customer Affiliate and Avaya. Customer Affiliates may be subject to credit approval by Avaya. All Orders accepted by an Avaya are subject to these Terms, including those which do not reference these Terms. All other terms and conditions contained in any purchase order or other document presented or developed by Customer and not expressly referenced in these Terms have no effect. The parties may agree on ordering by electronic mail, at the email address provided by Avaya to Customer from time to time, or on other means of electronic communication. Any electronic Order will be binding upon Customer as if submitted in writing.

1.4 Order of Precedence. If there is an express conflict between these Terms, the AUP, any other applicable agreement Customer may have with Avaya or its Affiliates and the applicable Service Description (unless the Service Description expressly states otherwise, these Terms will govern the use of the Service, followed next by the AUP, any applicable agreement Customer may have with Avaya or its Affiliates and any applicable Service Description.

1.5 Changes to, and Discontinuation of, the Service.

1.5.1 From time to time Avaya may update or modify the Service, including features, functionality and Supplemental Terms, provided that: (a) the change and modification applies to all customers generally, and are not targeted to any particular customer; and (b) one-month prior notice is provided to Customer for any material changes to the Service or the Supplemental Terms and in such case, Customer has the right to discontinue using the Service and terminate the respective Service Order without penalty in case of any change to the Service or Supplemental Terms that is of material detriment to Customer, by written notice within 60 days after Avaya notifies Customer of the change. Avaya will use commercially reasonable efforts to provide 60 days’ notice prior to ending the sale of a Service, at which time the Service will no longer be available for order. Avaya will continue to provide the Service through the end of Customer’s then current Service Period.

1.6 System Requirements. Services are dependent upon Customer’s maintenance of internet access, network access and power. Customer is responsible for maintaining all telecommunications (including mobile service and devices), broadband and computer equipment and services needed to access and use the Services, and for paying all charges associated with these services.

1.7 Registration. Customer may be required to register to use the Services. Registration may include providing information (e.g., email or physical addresses, etc.) and Customer agrees to keep such information updated.

1.8 Acceptable Use Policy. When Customer accesses and uses a Service, Customer is responsible for complying with these Terms, applicable laws and the Use Policies referenced in the Matrix. The Use Policies are posted on this website: <http://support.avaya.com/TermsOfSale> (or such successor site) and are incorporated into and form part of these Terms. Avaya may update the Use Policies from time to time and will post the updated version. Such updates will become effective on the next calendar month in which Avaya posts the updated version. Customer is responsible for reviewing the Matrix to determine which Use Policy applies to each Service.

1.9 Mobile Services. Some or all of the Service may be available or accessible via a compatible mobile device. Avaya cannot guarantee that all mobile devices are or will be compatible with the Service, and Customer is responsible for all mobile service charges.

1.10 Existing agreement. In case Customer has a valid agreement in place with Avaya or an Avaya authorized channel partner that can be used to purchase Services, the following sections from these Terms will not apply and the existing agreement will take precedent (as long as they are included in the existing agreement): Orders, Charges, Late Payments, Taxes, Term, Governing Law, Dispute Resolution, Choice of Forum for Disputes, Injunctive Relief, Arbitration of non US Disputes and Compliance.

2. PAYMENT, INVOICING, AND TAXES

2.1 Charges. Unless otherwise stated in the Supplemental Terms or Order, prices are quoted on a consumption and/or subscription basis and are expressed in local currency. Pricing herein does not include charges for taxes, fees, and government-imposed surcharges, which may be included in the invoices. All fees due to Avaya under these Terms are non-cancellable and the sums paid are non-refundable, except as otherwise expressly provided in these Terms. Payments must be made at the address designated on the invoice or as otherwise indicated by Avaya.

If Customer adds or removes users or numbers, during a month, the applicable Subscription fees will be pro-rated for the month.

Payment is due within 30 days from the date of Avaya's invoice other than with respect solely to those portions that are disputed by Customer and noticed by Customer to Avaya within 15 days from the date of Avaya's invoice. If a different invoicing or payment method is agreed between Avaya and Customer, Customer will pay all incremental bank charges, taxes, duties, levies and other costs and commissions associated with such other methods of invoicing and payment.

2.2 Credit Card Payment.

2.2.1 Customer's account is billed at the time of or shortly after Customer's transaction. Customer hereby authorizes Avaya or its payment processor to charge Customer's credit card or other payment mechanism as may be approved by Avaya in advance or on a periodic basis in accordance with the terms on the order or Service Description or SOW.

2.2.2. If any payment made via Customer's chosen payment method is rejected, denied or returned unpaid for any reason: (a) Avaya may suspend Customer's Subscription and access to the Service; (b) Customer is liable for any fees, costs, expenses or other amounts Avaya incurs arising from such rejection, denial, or return (and Avaya may automatically charge Customer for such amounts); and (c) Avaya will provide Customer with further instructions regarding how Customer may update or replace the relevant payment method. If Customer fails to provide a valid credit card or other payment mechanism within thirty (30) days after the Services have been suspended, Avaya may cancel the Services, in which case Customer will be subject to any termination fees outlined in the Service Description, if applicable. If the credit card or other payment mechanism is accepted, the Subscription billing date will remain the same as the original date for subsequent months. Receipt by Avaya's payment processor of final good funds in settlement of Customer's credit card or other payment transaction will satisfy Customer's payment obligation. Subject to certain credit requirements as determined by Avaya, Avaya may agree to allow Customer to pay amounts due hereunder in arrears. In such event, Customer will make all of the payments due hereunder within thirty (30) calendar days of the date of the invoice. Customer acknowledges and agrees that if applicable in the Order, Service Description, or SOW, Customer's credit card or other payment mechanism on file will be automatically charged recurring fees on a monthly basis during the Service Period, including during any renewals thereof, unless Customer cancels the Subscription. Customer hereby authorizes Avaya or its payment processor to process such automatic recurring charges.

If Customer cancels a Subscription, Customer will not be entitled to a refund or a credit for any fees already due and/ or paid, and Customer will be subject to any termination fees outlined in the Service Description.

2.3 Late Payments. If a payment is not timely received from Customer, Avaya may suspend performance of its obligations, including licenses and performance of orders until all such overdue amounts are paid in full. In addition, late payments will be subject to an incremental fee equal to the lesser of 1.5% per month or the maximum rate allowed by applicable law that must be paid in order for overdue amounts to be deemed paid in full. Customer will reimburse Avaya for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

2.4 Price Changes. Avaya may change the fees associated with any Services upon 30 days advance written notice. Customer's continued use of the Service after any price change becomes effective constitutes Customer acceptance of the modified fees, and such amounts shall apply as of the first day of the next month after the fee change was posted or communicated to Customer.

2.5 Taxes. Unless Customer provides Avaya with a current tax exemption certificate, Customer is responsible for paying all legally required taxes, including without limitation any withholding, sales, excise or other taxes and fees which may be levied upon the sale, movement, transfer of ownership, license, installation or use of the Products or upon the Services, except for any income tax assessed upon Avaya.

2.6 Changes to these Terms. AVAYA MAY MODIFY THESE TERMS AT ANY TIME AT ITS SOLE DISCRETION TO THE EXTENT REQUIRED TO COMPLY WITH (A) CHANGES TO LAWS OR REGULATIONS APPLICABLE TO THE SERVICES, (B) GOVERNMENTAL ORDERS, (C) MODIFICATIONS TO THE SERVICE, OR (D) OBLIGATIONS IMPOSED BY AVAYA SUPPLIERS, BY POSTING MODIFIED TERMS ON <http://support.avaya.com/LicenseInfo> (OR SUCH SUCCESSOR SITE AS DESIGNATED BY AVAYA) OR UPON NOTICE TO CUSTOMER BY AVAYA VIA EMAIL OR THROUGH SOME OTHER MEANS DESIGNATED BY AVAYA. CHANGES TO THESE TERMS WILL BE EFFECTIVE AS OF THE DATE WE POST THEM OR, AT AVAYA'S DISCRETION, ISSUE OUR NOTICE TO CUSTOMER OF SUCH CHANGE, UNLESS WE SPECIFY A DIFFERENT EFFECTIVE DATE WHEN WE MAKE A PARTICULAR CHANGE. CUSTOMER IS SOLELY RESPONSIBLE FOR CHECKING FOR ANY TERMS UPDATES. CUSTOMER'S CONTINUED USE OF THE SERVICE MEANS THAT CUSTOMER ACCEPTS AND AGREES TO ANY REVISED TERMS AND CONDITIONS. IN THE EVENT CUSTOMER DOES NOT AGREE TO ANY SUCH MODIFICATION, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE AND TERMINATE THESE TERMS BY PROVIDING WRITTEN NOTICE TO AVAYA OF ITS INTENT TO TERMINATE WITHIN FIFTEEN (15) DAYS AFTER AVAYA NOTIFIES CUSTOMER OF (OR POSTS) THE MODIFIED TERMS. IN THE EVENT CUSTOMER NOTIFIES AVAYA OF ITS INTENT TO TERMINATE THESE TERMS DURING SUCH FIFTEEN (15) DAY RESPONSE PERIOD, THESE TERMS SHALL TERMINATE, AND CUSTOMER SHALL CEASE USE OF THE SERVICE, EFFECTIVE AS OF THE LAST DAY OF THE BILLING PERIOD DURING WHICH THE CUSTOMER NOTIFIED AVAYA OF ITS INTENT TO TERMINATE.

3. TERM; TERMINATION; DOWNTIME; SURVIVAL

3.1 Term. These Terms begin when accepted by Customer ("the "Effective Date") and continue for the Service Period or until terminated in accordance with Sections 3.2 and 3.3 or until the provision of Services under the Order finalize.

3.2 Termination for Cause. Unless otherwise specified in the Supplemental Terms, if either party commits a material breach of its obligations under these Terms, or under any Order, the other party may terminate these Terms or the affected Order by giving the breaching party at least 30 days' prior notice, with an opportunity to cure the breach before the 30-day period elapses. If Avaya terminates under this provision, then in addition to any other rights Avaya may have, Customer will be responsible for all fees for the Service for the remainder of the Service Period, as well as any early termination or cancellation fees (if applicable).

3.3 Termination for Convenience of these Terms. Either party may terminate these Terms at any time for convenience upon 90 days' prior written notice.

3.4 Termination for Convenience of Orders or Services. Customer may terminate an Order for convenience if and as set forth in the Supplemental Terms. Such termination may be subject to fees as stated in the Supplemental Terms.

3.5 Expiration/Termination. Upon expiration of the Service Period or termination pursuant to this Section Customer shall immediately cease use of the Service and return or destroy (in accordance with Avaya's instructions) any deliverables provided to Customer in connection with the Service, including any Avaya's Intellectual Property. Upon request, Customer shall certify in writing to Avaya that Customer has complied with this provision and Avaya may provide such certification to its suppliers.

3.6 Effect of Termination. Except as expressly provided otherwise in these Terms or in the case of termination for uncured material breach, any termination of these Terms will not affect any rights or obligations of the parties under any Order accepted before the termination of these Terms became effective. The provisions contained in these Terms will continue to apply to such Orders until their completion or expiry of their term.

3.7 Service Availability. Services (or part) may be unavailable for use by Customer (a) for scheduled downtime to permit Avaya to conduct maintenance, or to modify, upgrade or update the Service, and Avaya will use reasonable efforts to notify Customer of such scheduled downtime in advance in accordance with the Supplemental Terms, (b) without notice in the event that Avaya reasonably believes there may be a denial of service attack or other security risk to the Service, Customer (or its users) or Avaya's other customers, or (c) without notice in the event that Avaya determines that it is necessary or prudent to do so to or for legal or regulatory reasons (collectively, "Service Suspensions"). Avaya shall not be liable to Customer for Service Suspensions.

3.8 Survival. The provisions concerning survival, Avaya's Intellectual Property rights, disclaimer of warranties, limitation of liability, any indemnification obligations under these Terms in any section of these Terms, Feedback, Confidentiality and Protection, Miscellaneous, and any other terms which, by their nature, are intended to survive termination will survive any such termination of these Terms.

4. CUSTOMER CONTENT AND MARKS

4.1 Customer is solely responsible for Customer Content, including any loss or damage to Avaya, its suppliers or a third party arising from or relating to Customer Content. Customer represents and warrants that it has all necessary rights to, and hereby does, grant to Avaya a

limited, non-exclusive, non-transferable, non-sublicensable license to access, use, store, archive for a period of time, modify, display, reproduce, prepare derivative works of, and distribute Customer Content to the extent necessary for the purpose of providing the Service.

4.2 As between Avaya and Customer, Customer retains all right, title and interest in and to Customer Content. Avaya will not share Customer Content or Other Users' Content with any third parties unless: (a) Avaya has Customer written or electronic consent for sharing any of Customer Content and Other Users' Content; (b) it is required by law; or (c) Avaya provides Customer Content or Other Users' Content to third parties (e.g. sub-contractors) to carry out tasks on Avaya's behalf (e.g., data storage, etc.) as directed by Avaya and subject to appropriate agreements with those third parties.

4.3 In connection with the provision of the Service, Customer hereby grants Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to display Customer trade names, trademarks, service marks, logos, domain names and the like ("Customer Marks") and to host and display likenesses and photo images; provided, that the use of Customer Marks in connection with these Terms shall not create any right or title in or to the use of Customer Marks and all such use and goodwill associated with Customer Marks will inure to the benefit of Customer.

5. AVAYA'S INTELLECTUAL PROPERTY RIGHTS

5.1 Avaya Owns Avaya Intellectual Property. Avaya, its Affiliates, licensors and suppliers own all rights, title and interest in and to any intellectual property in Services, any and all deliverables provided to Customer hereunder as well as any know-how, derivative works, inventions, processes, databases, documentation, training materials, and any other intellectual property and any tangible embodiments of it (collectively, "Avaya Intellectual Property"). Customer shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works of any Avaya Intellectual Property.

5.2 Marks. Nothing herein grants Customer any right to use any trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features of Avaya or its subcontractors or suppliers. Customer shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Avaya Intellectual Property, Services or software.

6. RIGHTS AND DISCLAIMERS

6.1 All information transmitted through the Service is the sole responsibility of the person from whom such information originated. Avaya reserves the right, but is not obligated to pre-screen, refuse, flag, filter, or remove any material posted on the Service, including any Customer Content, which Avaya, in its sole discretion, deems inconsistent with these Terms, including any material Avaya has been informed or has reason to believe constitutes intellectual property infringement. Avaya may take the action(s) set forth above, or similar actions, without notice or liability to Customer or any other party. Accordingly, Avaya assumes no liability for any action or inaction regarding transmissions, communications, or content provided by Customer or any third parties.

6.2 Customer acknowledges that, in performing the Service, Avaya may archive Customer Content and Other Users' Content and may periodically delete Customer Content and Other Users' Content without notice to Customer. Customer is solely responsible to ensure that any information, including Customer Content, Customer wishes to retain is downloaded, saved and/or backed-up. Avaya may implement reasonable limits as to the size or duration of storage of any Customer Content or Other Users' Content related to the use of the Service.

6.3 Any software security feature is not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures.

6.4 It is Avaya's policy to respond to notices of alleged copyright infringement that comply with the United States Digital Millennium Copyright Act and where appropriate at Avaya's discretion to terminate the accounts or subscription of infringers. If Customer would like to send Avaya an alleged copyright infringement notice as it pertains to the Service, go to the following link <http://support.avaya.com/AvayaCopyrightAgent> (or such successor site) and follow the instructions on how to get in touch with Avaya. If Customer has trouble accessing this link, then Customer may contact Avaya for further information at copyrightagent@avaya.com with the subject line: "DMCA Takedown Request" or by mail to:

Avaya Copyright Agent Notification
350 Mount Kemble Avenue, Room 2C109
Morristown, NJ 07960
1-908-953-2044

7. DISCLAIMER OF OTHER WARRANTIES

7.1 TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, AVAYA PROVIDES NO OTHER WARRANTIES, AND EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICE OR ANY SERVICES HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR

PURPOSE, TITLE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER AVAYA, NOR ITS LICENSORS, NOR ITS SUPPLIERS WARRANTS THAT: (A) CUSTOMER'S USE OF THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR PROVIDE ANY SPECIFIC RESULTS; (B) CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR FREE FROM ERROR OR VIRUSES; (C) THAT CUSTOMER'S USE OF THE SERVICE WILL BE FREE FROM LOSS, CORRUPTION, OR DELETION OF CUSTOMER OR THIRD PARTY DATA; (D) THAT THE SERVICES WILL PREVENT TOLL FRAUD; (E) INFORMATION OR CONTENT PROVIDED TO CUSTOMER THROUGH THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; (F) DEFECTS IN THE SERVICE WILL BE CORRECTED, OR (G) THE SERVICE WILL HAVE ANY PARTICULAR UP-TIME, QUALITY OF SERVICE, OR QUALITY OF VOICE OR FAX COMMUNICATIONS.

8. LIMITATION OF LIABILITY

EXCEPT FOR CLAIMS OF PERSONAL INJURY, WILLFUL MISCONDUCT, VIOLATION OF AVAYA'S OR ITS SUPPLIERS' OR LICENSORS' INTELLECTUAL PROPERTY RIGHTS, AND/OR TO THE EXTENT OF THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THESE TERMS, IN NO EVENT WILL AVAYA AND ITS AFFILIATES AND LICENSORS OR SUPPLIERS, OR CUSTOMER, BE LIABLE, REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE OR OTHERWISE FOR: (A) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT, OR CONSEQUENTIAL DAMAGES; (B) LOSS OR CORRUPTION OF DATA OR INTERRUPTED OR LOSS OF BUSINESS; OR (C) TOLL FRAUD, ANY LOSS OF PROFITS, REVENUE, REPUTATION, GOODWILL, OR ANTICIPATED SALES OR SAVINGS, OR COST OF COVER, SUBSTITUTE GOODS, OR PERFORMANCE, EVEN IF AVAYA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ALL LIABILITY OF AVAYA, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS COLLECTIVELY FOR CLAIMS ARISING OUT OF THESE TERMS, CUSTOMER'S ORDER, OR THE SERVICE SHALL NOT EXCEED THE FEES PAID TO AVAYA FOR THE SERVICE DURING THE TWELVE (12) MONTHS BEFORE THE LAST EVENT THAT GAVE RISE TO THE CLAIM. THE LIMIT IS IN THE AGGREGATE AND NOT PER INCIDENT.

NOTHING IN THESE TERMS LIMITS OR EXCLUDES LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

9. INDEMNIFICATION

9.1 Avaya's Defense and Indemnification Obligations. Avaya will defend Customer against third party claims brought against Customer to the extent arising solely from an allegation that the Service directly infringes a third-party patent or copyright. Avaya will indemnify Customer against damages (specifically excluding any increased or enhanced damages resulting from Customer's willful infringement) finally awarded against Customer by a court of competent jurisdiction or a settlement amount approved by Avaya. Avaya's obligations under this Section will not apply if the claim arises or results from (a) Customer's breach of these Terms, (b) modification to the Service or use of the Service outside the scope of these Terms, the Supplemental Terms or SOW, (c) combination, operation, or use of the Service with, or damages based on the value of, products, software, data, services or business processes not provided by Avaya, (d) Third Party Products and non-Avaya branded Services, (e) Avaya's compliance with any designs, specifications, requirements or instructions provided by Customer or a third party on Customer's behalf, (f) use of non-current or unsupported versions of the Service, or use of the Service after Avaya notifies Customer to stop use due to a third party claim, (g) Customer's Applications, Customer Content or Customer data (including Personal Data), Other Users' Content or any other content or data not provided by Avaya, (h) Deliverables, APIs and SDKs, (i) open source and freeware software or (j) any services, products, software or business processes Customer provides based on or related to the Service. In the event a claim is made or likely to be made, Avaya may, at Avaya's option and discretion, (i) procure for Customer the right to continue using the Service under the terms of these Terms, or (ii) replace or modify the Service to be non-infringing without material decrease in functionality. If these options are not commercially reasonably available, at Avaya's discretion, Avaya may terminate the Service by unilaterally terminating the applicable order) upon written notice to Customer and refund Customer any advanced payments for unused Subscription.

9.2 Customer' Defense and Indemnification Obligations. Customer will defend and indemnify Avaya and its Affiliates, and their respective officers, directors, employees, contractors, suppliers, licensors, partners and agents (each, an "Avaya Indemnified Party") against third party claims brought against an Avaya Indemnified Party arising from (a) Customer's breach of these Terms, (b) Customer's violation of applicable law, (c) Customer's Applications, Customer Content or Customer data (including Personal Data), Other Users' Content, or the combination of Customer's Customer Content or data, or Other Users' Content, with other applications, content or processes (including, but not limited to any claim involving infringement or misappropriation of third party rights), (d) Customers use of the Services, (e) a dispute between Customer and any client, or dispute between Customer and any third party with whom Customer uses the Service to interact, or (f) Customers or its employees' or agents' negligence or willful misconduct. Customer will defend and indemnify the applicable Avaya Indemnified Party against all damages finally awarded against the Avaya Indemnified Party (or the amount of any settlement entered into by Customer) with respect to such claims.

9.3 Indemnification Procedures. The party against whom a third party claim is brought will (a) timely notify the other party in writing of the claim (provided, that the failure to provide timely notice shall not relieve the indemnifying party of its obligations under this Section unless the indemnifying party's defense of such claim is materially prejudiced by such failure), and (b) reasonably cooperate in the defense of the claim and may participate in the defense of the claim at its own expense. The party that is obligated to defend a claim will have the right to fully control the defense and to settle the claim; provided, however, that any settlement of a claim shall not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

9.4 Sole Remedy. THE FOREGOING STATES THE INDEMNIFYING PARTY'S ENTIRE LIABILITY, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INTELLECTUAL PROPERTY CLAIMS. THE FOREGOING ALSO IS IN LIEU OF, AND AVAYA DISCLAIMS, ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THE SERVICE AND ANY OTHER AVAYA INTELLECTUAL PROPERTY.

10. DATA PRIVACY

10.1 DPA. Avaya respects Customer's privacy and will only use information provided to Avaya by Customer or collected by Avaya in the provision of Services in accordance with Avaya's data privacy policies and the DPA. To the extent Avaya processes Personal Data on behalf of Customer, the most current Avaya DPA, published on <http://support.avaya.com/TermsOfSale> at the time of the Order, applies and is incorporated herein by reference. The DPA is considered a Supplemental Term, if applicable.

10.2 Where Avaya has received Customer's electronic contact data (e.g. e-mail address) in connection with a Product or Service Order, Avaya may occasionally send Customer information about similar Products and Services that may be of interest to Customer. If Customer does not wish to receive such information, Customer should contact Avaya Sales or notify Avaya via email at dataprivacy@avaya.com

11. FEEDBACK

Avaya welcomes Customer Feedback about the Service. All such Feedback provided by Customer or its users to Avaya or its authorized channel partners becomes Avaya's property and Customer agrees to and does hereby grant and assign all intellectual property rights therein to Avaya. Customer agrees to cooperate fully with Avaya in connection with such transfer and assignment and Avaya may use such Feedback however it elects without any monetary or other consideration of any kind owed to Customer or any third party.

12. EXTERNAL LINKS AND THIRD-PARTY SERVICES

In some cases, the Service may contain hyperlinks to External Services and Sites. Customer's use of such External Services and Sites is at Customer's own risk. Customer acknowledges and agrees that Avaya neither endorses nor has any responsibility for the External Services and Sites.

13. CONFIDENTIALITY AND PROTECTION OF SERVICE.

13.1 Confidential Information. Each party acknowledges that it may receive Confidential Information from the other party in connection with these Terms any Order, and during the course of the parties' general business relationship. Unless stated otherwise in this Section 9 or agreed otherwise by the parties, the receiving party shall keep in trust and confidence all Confidential Information, and may use Confidential Information solely for the purpose of furtherance of the business relationship between the parties, or to exercise its rights and fulfill its obligations under these Terms.

13.2 Authorized Disclosure. The receiving party may disclose Confidential Information only to its employees, contractors, agents, directors, officers, professional legal advisors, Affiliates or subcontractors with a need to know and who are bound by confidentiality obligations at least as protective as the terms stated in this Section 9 (collectively, the "Authorized Parties"). Each party is responsible for any Authorized Party's breach of this Section 9. The receiving party may disclose Confidential Information to persons other than an Authorized Party upon the prior written consent of the disclosing party. Notwithstanding the foregoing, the receiving party is authorized to disclose Confidential Information as required by applicable law in accordance with a valid order issued by a court, government agency or relevant regulatory or listing exchange authority, provided that the receiving party, where allowed under applicable law, provides: (i) prior written notice to the disclosing party of such obligation; and (ii) the opportunity for the other party to oppose such disclosure. The confidentiality obligations of each party will survive three years following the expiration or termination of these Terms or the Order, whichever occurs later. Upon such termination or expiration, the receiving party, upon request of the disclosing party, will cease all use of and/or destroy the disclosing party's Confidential Information (including any copies thereof) in the receiving party's possession, custody, or control, provided that the receiving party may keep archival copies due to mandatory retention laws, for regulatory purposes or to enforce its rights, subject to the confidentiality obligations as stated in this Section 9. Notwithstanding the foregoing, any trade secrets disclosed hereunder shall be held in confidence by the receiving party for: (i) as long as such Confidential Information remains the disclosing party's trade secret under applicable law; or (ii) until such Confidential Information falls under one of the exceptions to the confidentiality obligations specified in this Section.

13.3 Protection of Service. Customer acknowledges that the Service, any deliverables delivered to Customer in connection with the Service, and all other Avaya Intellectual Property are the property and Confidential Information of Avaya, its suppliers, and/or its licensors

and contain trade secrets of Avaya, its suppliers, and/or its licensors. Customer agrees at all times to protect and preserve the Service, any such deliverables, and Avaya Intellectual Property and to implement reasonable security measures to protect the trade secrets of Avaya, its Affiliates, suppliers, and its licensors.

14. SOFTWARE LICENSE TERMS AND UPDATES

14.1 If use of the Service requires Customer to download Software or Software is otherwise made available to Customer, such Software is licensed pursuant to (a) the terms and conditions made available to Customer when Customer downloads or installs the Software portion of the Service, or (b) if no such terms and conditions exist, then the applicable Avaya Global Software License Terms posted at <http://support.avaya.com/LicenseInfo> (or such successor site) in effect as of the Service Activation Date will apply, for the sole purpose of using the Service, and solely for the duration of the Service Period.

14.2 It is possible that Software may automatically download and install Updates from Avaya or its Affiliates from time to time. In such event, Customer agrees to promptly allow such Updates to be downloaded and installed.

15. GOVERNING LAW, DISPUTE RESOLUTION

15.1 Governing Law. These Terms, including any Dispute under the Order or these Terms, will be governed by the laws of the State of New York excluding both conflict of laws principles and United Nations Convention on Contracts for International Sale of Goods.

15.2 Dispute Resolution. In the event of any Dispute, the disputing party shall give the other party written notice of the Dispute in accordance with the notice provision of these Terms. The parties will attempt in good faith to resolve each Dispute within 30 days, or such longer period as the parties may mutually agree, following the delivery of such notice, by negotiations between designated representatives of the parties who have dispute resolution authority. If the parties are not able to resolve the Dispute within the period as set forth above then either party may bring an action or proceeding as set forth in Section 10.3 or 10.4, as applicable.

15.3 Choice of Forum for Disputes. For any Dispute arising or based upon an alleged breach committed, then either party may bring an action or proceeding solely in either the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York. Each party consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising under this Section 10.3.

15.4 Undisputed Invoices. Nothing in Section 10 will be construed to preclude Avaya from instituting a proceeding for payment of undisputed invoices from any court of competent jurisdiction.

15.5 Injunctive Relief. Nothing in Section 10 will be construed to preclude either party from seeking provisional remedies, including, without limitation, temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights, including its rights pending arbitration, at any time.

15.6 Time Limit. Actions or Disputes between the parties must be brought in accordance with this Section within 2 years from when the facts giving rise to such action or dispute occurred

15.7 Arbitration of Non-US Disputes. If a Dispute that arose anywhere other than in the United States or is based upon an alleged breach committed anywhere other than in the United States cannot be settled under the procedures and within the timeframe set forth in Section **Error! Reference source not found.**, it will be conclusively determined upon request of either party by a final and binding arbitration proceeding to be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed by the parties or (failing agreement) by an arbitrator appointed by the President of the International Chamber of Commerce (from time to time), except that if the aggregate claims, cross claims and counterclaims by any one party against the other party exceed One Million US Dollars at the time all claims, including cross claims and counterclaims are filed, the proceeding will be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a panel of three arbitrator(s) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator(s). The arbitrator(s) will have authority only to award compensatory damages within the scope of the limitations of Section 9 and will not award punitive or exemplary damages. The arbitrator(s) will not have the authority to limit, expand or otherwise modify the terms of these Terms. The ruling by the arbitrator(s) will be final and binding on the parties and may be entered in any court having jurisdiction over the parties or any of their assets. The parties will evenly split the cost of the arbitrator(s)' fees, but Avaya and Customer will each bear its own attorneys' fees and other costs associated with the arbitration. The parties, their representatives, other participants and the arbitrator(s) will hold the existence, content and results of the arbitration in strict confidence to the fullest extent permitted by law. Any disclosure of the existence, content and results of the arbitration will be as limited and narrowed as required to comply with the applicable law. By way of illustration, if the applicable law mandates the disclosure of the monetary amount of an arbitration award only, the underlying opinion or rationale for that award may not be disclosed.

15.8 Compliance. Customer and Avaya will cause their Affiliates to comply with the dispute resolution procedures described in this Section.

15.9 Disputes with Other Users. Customer is solely responsible for Customer's interactions with third parties with whom it uses the Service to interact. Avaya will have no liability with respect to such Customer interactions or disputes that may arise between Customer and such third parties. Avaya reserves the right, but has no obligation, to become involved with disputes between Customer and any such third party in the event that Avaya's interests are impacted.

16. EMERGENCY SERVICES, HIPAA AND PCI DISCLAIMERS

CUSTOMER HAS READ, UNDERSTOOD, AND AGREES, UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS THAT:

A. THE SERVICE, AS PROVIDED BY AVAYA, IS NOT CONFIGURED TO SUPPORT OR PROVIDE EMERGENCY CALLS OR COMMUNICATIONS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO 112, 999, 911 AND E911 SERVICE.

B. THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS ("HIPAA").

C. THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE PAYMENT CARD INDUSTRY DATA SECURITY STANDARD ALSO REFERRED TO AS PCI OR PCI DSS.

17. RECORDING

17.1 If conferences are applicable to the Service Customer is subscribing to, Customer acknowledges that the laws of certain states, provinces or countries require that if a conference is to be recorded, all participants in the conference must be informed of that prior to the recording taking place, so they may consent to being recorded (if required by applicable laws) in the relevant jurisdictions when using recording features. Customer acknowledges and agrees that Customer shall be solely responsible for complying with the local laws in the relevant jurisdictions when using recording features (this includes Customer's obligation to obtain the consent, if required by applicable laws, of all participants before the commencement of the recording). Avaya shall have no liability to Customer or any user or third party if consent is not obtained.

18. MISCELLANEOUS

18.1 Compliance. The parties will observe all applicable laws and regulations when using the Services. Avaya Services are subject to applicable import and export control laws and regulations of the United States and other countries. Each party, at its own expense, will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export to certain countries, for certain uses, or to certain end users. Each party agrees to provide the other party the information, support documents and assistance as may be reasonably required in connection with securing necessary authorizations or licenses required for the transactions contemplated by these Terms or in connection with associated reporting or recordkeeping obligations. Customer certifies that it is not on the US Department of Commerce's Denied Parties List or affiliated lists, the US Department of Treasury's Specially Designated Nationals List or on any other export exclusion list of any other US or non US governmental agency. Customer further certifies that neither the US Bureau of Industry and Security nor another US or non-US governmental agency has issued sanctions against Customer or otherwise suspended, revoked, or denied Customer's import or export privileges. Additional information regarding Avaya's compliance with applicable export and import laws and regulations can be obtained by contacting Avaya Global Trade Compliance at globaltrade@avaya.com.

18.2 Notices.

18.2.1 Notices made under these Terms for Customer or Customer's account specifically will be provided via a notification message displayed on Customer's account page or sent to the email address provided in Customer's registration for the Services or to any updated email address Customer has provided to Avaya in accordance with Avaya's standard account information update procedures. It is Customer's responsibility to keep Customer's email address current and Customer will be deemed to have received any email sent to any such email address the next business day upon Avaya sending of the email, whether or not Customer actually receive the email.

18.2.2 For notices made by Customer under these Terms and for questions regarding these Terms or the Services, Customer may contact Avaya as follows:

by US Postal Mail at
Avaya Inc
Attn: Director of Contracts
4655 Great America Parkway
Santa Clara, CA 95054

18.3 Force Majeure. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, fire, flood, Act of God, explosion, terroristic acts, hacking, malware, ransomware, business interruption or data loss caused by malicious or criminal act, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, and inability to secure materials or transportation facilities.

18.4 Agreement in English. The parties confirm that it is their wish that these Terms, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in English only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise. To the extent that the *Civil code of Québec* is found to govern any part of these Terms, the Customer hereby waives its rights pursuant to articles 2125, 2126 and 2129 of the *Civil code of Québec*, and acknowledges that its sole rights and recourses with respect to termination of these Terms are those set forth in these Terms.

18.5 Miscellaneous. These Terms (including, but not limited to, the AUP and applicable Service Description and the Service order(s)) constitutes the entire understanding of the parties with respect to the subject matter of these Terms and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties. These Terms may be executed in multiple counterparts, each of which will constitute an original and all of which will constitute but one agreement, subject to local law requirements. These Terms may be executed by electronic signature, which will be binding between the parties as though handwritten. Subject to local law requirements, electronic signature will include either an electronic symbol adopted by a person with the intent to sign these Terms or a photostatic copy of a handwritten signature. Except as otherwise provided herein in Section 2.8, Changes to These Terms, any modifications or amendments to these Terms must be in writing and physically or electronically signed by both parties. In no event will electronic mail constitute a modification or amendment to these Terms. If any provision of these Terms is determined to be unenforceable or invalid by court decision, these Terms will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. The failure of either party to assert any of its rights under these Terms, including, but not limited to, the right to terminate these Terms in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of these Terms in accordance with its terms. Customer agrees that no joint venture, partnership, employment, or agency relationship exists between Customer and Avaya as a result of these Terms or use of the Service. Avaya or its representative may audit at Avaya's discretion, Customer's compliance with these Terms and Customer's use of the Service, and Customer shall reasonably cooperate with such audit.

18.6 Assignment, Independent contractor & Subcontractors. Avaya may assign these Terms and any order under these Terms to any of its Affiliates or to any entity to which Avaya may sell, transfer, convey, assign or lease all or substantially all of the assets or properties used in connection with its performance under these Terms. Any other assignment of these Terms or any rights or obligations under these Terms without the express written consent of the other party (not to be unreasonably withheld) will be invalid. Avaya may subcontract any or all of its obligations under these Terms but will retain responsibility for the work.

EXHIBIT A- Definitions

Defined terms are identified by capitalized letters and have the meaning given in this Exhibit or elsewhere in these Terms. This Exhibit A is incorporated into and part of these Terms.

“Acceptable Use Policy” or “AUP” means the document posted at <http://support.avaya.com/TermsOfSale> (or such successor site) which describes actions that Avaya prohibits when any party uses its services.

“Acceptance Period” means the time period in which Customer may test the Deliverable which shall not exceed 5 Business Days starting with the business day immediately following the date on which the Deliverable is delivered to Customer.

“Add-on Services” means the implementation, onboarding, professional and/or managed services as described in the applicable Order Specific Terms.

“Affiliate” means, with respect to either party, an entity that is directly or indirectly controlling, controlled by, or under common control with a signatory of these Terms. For purposes of this definition, **“control”** means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the term **“controlled”** has the meaning correlative to the foregoing.

“Application” means a software application or website within a Customer’s domain or that Customer creates using the API’s that interfaces or connects to the Services.

“Business Days” means Monday through Friday, 8:00 to 5:00 pm ET, excluding Avaya holidays.

“Confidential Information” means non-public confidential or proprietary information of the disclosing party that is (a) clearly marked confidential at the time of disclosure or (b) a reasonable person would know, based on the circumstances surrounding disclosure and the nature of the information, that the information should be treated as confidential.

“Customer” means the legal entity which signs these Terms.

“Customer Content” means the content of all data, information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by Customer or Customer personnel, including Other Users Content, while utilizing the Service.

“Data Subject” means an identified or identifiable natural person.

“Delivery Date” means the date on which Avaya delivers Equipment in accordance with the applicable Order Specific Terms or, in the case of Software that can be enabled by Avaya remotely or delivered via electronic means, the date the Software is enabled or downloaded to the target processor.

“Deliverables” means customized software, customized documentation, or other work product provided under the applicable Order Specific Terms.

“Dispute” means any dispute, claim or controversy arising out of or relating to these Terms.

“DPA” means Data Privacy Addendum.

“Documentation” means information published by Avaya or its Affiliates in varying mediums which may include product information, operating instructions and performance specifications that Avaya or its Affiliates generally makes available to users of its products. Documentation does not include marketing materials.

“Effective Date” means the date in which the last party signs these Terms.

“Equipment” means phones compatible with the Service or other hardware.

“External Services and Sites” means non-Avaya websites, content, or resources or otherwise interface or work with third party services which are not maintained or controlled by Avaya.

“Feedback” means comments or suggestions.

“Initial Term” means the term of the Subscription that is indicated in Customer’s order and commences upon the date the Service is available for Customer’s use.

“Matrix” means the chart that is posted on the following website (or such successor site): <http://support.avaya.com/TermsOfSale> that indicates the Schedules and Supplemental Terms that apply to a specific Service. Avaya reserves the right to update the Matrix.

“Other Users’ Content” means the content of any information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by other users while interacting with the Service, including, without limitation, likenesses or photo images, advertisements or sponsored content.

“Personal Data” means data that identifies or may be used to identify an individual.

“Processing,” “Process,” “Processed” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“Project Phase” means a defined activity, objective or period as set out in the applicable SOW during which Add-On Services will be provided.

“Rejection Notice” means a notice Avaya receives from Customer before the end of the Acceptance Period indicating in reasonable detail the material failure of the Add-On Services, Deliverable, or Project Phase to conform to the agreed acceptance criteria in the acceptance procedures.

“Renewal Term” means each of the subsequent terms after the Initial Term.

“Service Activation Date” means the date Avaya advises Customer that the Services are available for Customer’s use.

“Service Description” means the applicable description of the Services then current as of the date of Customer’s ordering of the Services which is incorporated by reference and is available to Customer upon request or via links in the Matrix.

“Service Period” means the period of time in which Avaya is providing Services to Customer, whether the Initial Term or Renewal Term.

“Software” means computer programs in object code, provided by Avaya whether as stand-alone products or pre-installed on Equipment, and any upgrades, Updates, patches, bug fixes, or modified versions thereto.

“Statement of Work” or **“SOW”** means a Customer-specific document(s) that describes the features, terms and conditions of an Avaya service being purchased by Customer.

“Supplemental Terms” means, individually or collectively, the Use Policies and Service Descriptions.

“T&M Services” or **“time and material Services”** means Add-On Services which are billed by Avaya based upon the time spent to perform the work and for the materials used.

“Third-Party Products” means any product made or provided by a party other than Avaya, including: (i) products ordered by Customer from third parties; (ii) products provided by Avaya that are recognizable as standalone items, and; (iii) products identified as separate items on Avaya’s price list, quotes, Order specification forms or Documentation.

“Third-Party Services” means any non-Avaya branded service provided under these Terms.

“Traffic Data” means user billing data and/or metadata, including Caller ID, name, number dialed, duration of call, landline or mobile originated call, SMS send / receive destinations.